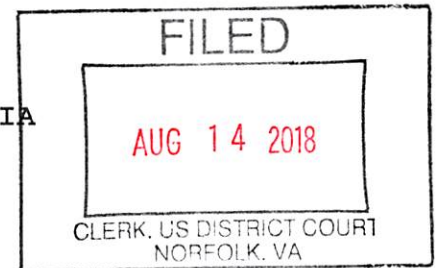


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



TYVONE FREEMAN, #1155841,

Petitioner,

v.

CIVIL ACTION NO. 2:17cv76

HAROLD CLARKE, *Director,*  
*Virginia Department of Corrections,*

Respondent.

FINAL ORDER

Petitioner Tyvone Freeman seeks a writ of habeas corpus alleging constitutional errors underlying his state conviction and sentence on charges of robbery, attempted robbery, abduction for pecuniary benefit and his use of a firearm while committing the other offenses. The Respondent moved to dismiss Freeman's petition, and the court previously granted in part and denied in part that motion. The court also granted Petitioner's Motion to Appoint Counsel and Motion for an Evidentiary Hearing on the ineffective assistance of counsel claims. See R. & R. (ECF No. 21), adopted in full by Order (ECF No. 41).<sup>1</sup>

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<sup>1</sup> On February 1, 2018, while objections to the first Report and Recommendation were pending, Freeman filed a "Motion for Relief" in which he asked the court to set aside or overturn his conviction. (ECF No. 38). The Motion for Relief does not set forth any argument or theory not presented in Freeman's original petition. Accordingly, it was resolved by entry of the court's prior Order granting in part and denying in part the Commonwealth's Motion to Dismiss entered February 14, 2018. (ECF No. 41). Accordingly, the Clerk is directed to terminate the "Motion for Relief" as moot.

The ineffective assistance of counsel claims were re-referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. (ECF No. 43).

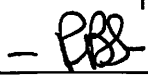
After a telephone conference with counsel regarding the need for an evidentiary hearing, counsel indicated a hearing would not be required and the matter could be resolved by supplemental briefing, and stipulated facts. A schedule for supplemental briefing was set. (ECF Nos. 44-46). After supplemental briefing the magistrate judge filed a Report and Recommendation on July 13, 2018, recommending that the court grant the writ unless the Commonwealth of Virginia promptly resentences Freeman for the crimes for which he was convicted

Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On July 26, 2018, the court received Respondent's Objections to the Report and Recommendation (ECF No. 53), and the Petitioner filed his response on August 9, 2018 (ECF No. 54).

The court, having reviewed the record and examined the objections to the Report and Recommendation filed by Respondent and the response to objections filed by Petitioner, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the

Report and Recommendation filed July 13, 2018. It is, therefore, ORDERED that Respondent's Motion to Dismiss be DENIED with respect to the claims of ineffective assistance of counsel and the Petitioner's petition be GRANTED unless, within 90 days from the date of the entry of this Order, the Richmond Circuit Court resentences Freeman in accordance with Virginia law. The Commonwealth's failure to resentence Freeman would result in the writ of habeas corpus being issued and the Petitioner being immediately released from custody. The parties are hereby notified that each may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Clerk is directed provide an electronic copy of the Final order to all counsel of record.

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/s/  
Rebecca Beach Smith  
Chief Judge  
-  \_\_\_\_\_  
REBECCA BEACH SMITH  
CHIEF UNITED STATES DISTRICT JUDGE

August 14, 2018